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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.2416 OF 2005

Shashikant Baburao Patkale Appellant
versus
Sau Anita Shashikant Patkale Respondent

Mr.A.M.Kulkarni for appellant.
Mr.Mandar Limaye for respondent.

CORAM : A.S.OKA, J.

DATE : 06th March 2007

ORAL JUDGEMENT :

1. Admit. Advocate for the respondent waives service. By consent, taken up for hearing forthwith.

2. Heard learned advocates appearing for the parties. The appellant is the husband of respondent. In the year 1996 a son by name Hrishikesh was born to the respondent. In the year 1998 second son Rohan was born to the respondent. The appeal arises out of an application filed by the appellant for custody of the minor children. The learned Trial Judge has rejected the said application by noting that both

the sons have stayed with the respondent mother since birth. The learned Judge has referred to the financial condition of both the parties. The learned Judge has also referred to an interview conducted by him of the minor children. The learned Judge has noted that in the interview both the minor children expressed desire to stay with the mother.

3. The learned advocate appearing for the appellant submitted that the appellant being father and the only natural guardian of the sons was entitled to custody, as both the sons are of the age of above five years. He submitted that the appellant has a right to custody. He pointed out that even assuming that the appellant is not entitled to custody, no order has been passed as regards grant of access. The learned advocate for the respondents supported the impugned judgement and order.

4. I have considered the submissions. The age of the elder son as of today must be ten years and the younger son is eight years. All along they have stayed with the respondent mother. The prayer of custody of the minor children cannot be decided only on the basis of the legal rights of

the parents and the paramount consideration is the welfare of the minors. The learned Trial Judge on the basis of the wishes expressed by the minor children has maintained the custody with the respondent mother. Apart from the wishes expressed by the minors, as of today the children are of tender age and due to unfortunate dispute between the appellant and the respondent they are not living with the appellant. Therefore, at this stage no case is made out for interference so far as custody is concerned. The orders regarding custody are never final in the sense that in case of change of circumstances the parties can always apply to the competent Court for appropriate relief.

5. Considering the present age of the sons it is desirable that the appellant gets an opportunity to regularly meet both his sons. It is in the interest of both the sons that they regularly meet their father. Therefore, appropriate directions will have to be given to ensure that proper access is granted to the appellant to meet the minor children.

6. As both the parties have not contacted their respective advocates, it is necessary to send

back the case to the Trial Court only for the limited purpose of passing appropriate orders regarding grant of access to the appellant. Hence I pass following order.

7. ORDER :-

a) The impugned order insofar as it rejects the prayer made by the appellant in respect of the custody of the children is confirmed. However, the matter is remanded to the Trial Court for limited purpose for passing appropriate directions as regards grant of access to the appellant to meet the children;

b) The Trial Court will issue notice to both the parties and will pass appropriate directions in this behalf after giving an opportunity of being heard to the parties;

c) There will be no orders as to costs;

d) Writ be sent immediately.

8. In view of disposal of first appeal itself, Civil Application No.5946 of 2005 does not survive and stands dismissed as not surviving.

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(A.S.OKA, J.)